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Supreme Court, U.S.
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No. 04-953

In The
SUPREME COURT OF THE UNITED STATES

PAUL E. WABEKE,
Petitioner

v

ANDREW J. MULDER,
Respondent

Petition For A Writ Of Certiorari
To The 6th Circuit Court of Appeals

MOTION FOR REHEARING

By:
Paul Wabeke, *pro se*
PO Box 1132
Holland, Mi. 49423-1132

April, 2005

QUESTIONS

1. Whether, under Due Process and Equal Protection of Law, the petition in this case should be granted and the case remanded for consideration in light of *Exxon Mobil v Saudi Basic*, 544 US ____ as in the other *Rooker-Feldman* cases of *Blaisdell v Rochester, N.H.*, (#04-1) and *Holloway v Ar. State Bd. of Architects*, (#04-745)?

2. Alternatively, where a state judge has terminated the First Am. rights of Petitioner, a state plaintiff, whether the collateral action authorized by the 14th Am. and civil rights acts - 42 USC 1983, etc. - fall within *Exxon Mobil* as exceptions to *Rooker-Feldman* which Congress may authorize?

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JURISDICTION

Certiorari was denied on March 21, 2005. Rehearing is timely when mailed on or before April 15, 2005. Rule 44.

FACTS

On the merits, this is a First Amendment civil rights case attempting to protect Petitioner's freedoms, his right to petition, speak critically and expose fraud, waste and corrution in local government. But Petitioner has been *permanently enjoined* from doing so in state courts by false and misleading allegations and summary process. He would like his rights restored.

Like *Exxon-Mobil v Saudi Basic*, #03-1696, the district court originally dismissed this case for lack of subject matter jurisdiction citing *Rooker-Feldman* and 6th Circuit cases. See Pet. Appendix C, at 12a-14a.

On appeal the 6th Circuit affirmed based on *Rooker-Feldman*. See Appendix A, at 1a - 3a.

A timely petition for writ of certiorari was submitted raising 4 questions, the second of which sought to challenge *Rooker-Feldman*. [1]

At the time this Petition was submitted Petitioner was not aware that this Court had granted certiorari in *Exxon-Mobil v Saudi Basic*, #03-1696, which also challenged the *Rooker-Feldman Doctrine*.

After the petition was filed, Petitioner discovered that *Rooker-Feldman* was being challenged in the *Exxon Mobil v Saudi Basic Ind. Corp. No. 03-1696*. Subsequently, in his Reply *Exxon Mobil* was referenced. (See Reply, p 8, 9)

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[1] The question presented was:
2. Whether the *Rooker-Feldman Doctrine* should be revisited when [where] it is clear [in this case] that the First Am. "right to petition . . for redress of grievances" *pro se* cannot be protected in state or lower federal courts?

However, despite this common ground, this Petition was denied certiorari on March 21, 2005.

On March 30, 2005 the *Exxon Mobil* decision was made reversing the 3rd Circuit Court of Appeals.

But by then this case was dead.

Petitioner now moves for rehearing.

There are ample reasons and distinctions from *Exxon* that warrant an independent review to prevent further injustice. First, Respondent Mulder was *never a party* in the state case. By his own admission his only involvement was as an attorney for the City of Holland. (Pet. Resp. at ii, 26-27, 30) Second, Mulder secured the permanent injunction against Petitioner, without regard for Petitioner's civil rights or the truth of the facts he asserted. Third, in contrast to *Exxon Mobil*, this is a civil rights case involving a violation of the First Amendment by a state court - by imposing a permanent injunction against Petitioner filing lawsuits against local government - an injunction never expressly endorsed by this Court. Oppositely, the First Am. right of petition *was* protected for corporations in *BE & K Construction Co. v NLRB*, 536 US 516 (2002). *Rooker-Feldman*, as applied below, prohibits a federal challenge to this civil rights violation.

REASONS FOR GRANTING THE MOTION FOR REHEARING

1. UNDER DUE PROCESS AND EQUAL PROTECTION OF LAW CERTIORARI SHOULD BE GRANTED AND THIS CASE REMANDED TO THE 6TH CIRCUIT FOR FURTHER PROCEEDINGS CONSISTENT WITH *EXXON MOBIL v SAUDI BASIC IND. CORP.*

This case challenged *Rooker-Feldman* and was docketed while the case of *Exxon Mobil v Saudi Basic Ind. Corp., No. 03-1696* was pending decision on the same issue. See Petition Question 2, p i ; fn 1 here.

In two other petitions involving *Rooker-Feldman*, filed before the decision in *Exxon Mobil v Saudi Basic Ind. Corp., No. 03-1696*, the court granted certiorari and remanded to the respective courts of appeals. See O4-1, *Blaisdell v Rochester, NH*; 04-745, *Holloway v Ar. State Bd. of Architects*. (See certiorari - summary dispositions of April 4, 2005.)

Due Process and Equal Protection of the Law would provide that the same result should apply in this case. [2]

Secondly, as admitted by Respondent in this case, the Respondent was *only* involved in the state case as an attorney for the City of Holland - the opposing council to Petitioner Wabeke, who was *pro se*. (See Resp. p ii, 26-27, 30). Respondent Mulder was *not* a party in any respect whatsoever. Yet Respondent deceptively claimed *Rooker-Feldman* protection and lack of subject matter jurisdiction at the District Court. (See Mot. Dis. p 1, Brief p 6-7)

This fact is in stark contrast to *Exxon Mobil v Saudi Basic Ind. Corp., No. 03-1696*, where both parties were in state and federal courts.

For these reasons Petitioner believes rehearing should be granted, certiorari granted and the lower court decisions vacated and the case remanded.

However, he would be more pleased with an alternative - granting certiorari and deciding the merits.

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[2] Petitioner wonders why his petition was not held pending the *Exxon Mobil* decision? Was it because he is *pro se*?

2. ALTERNATIVELY, CERTIORARI SHOULD BE GRANTED AND A DECISION MADE WHETHER CIVIL RIGHTS ACTIONS AUTHORIZED BY THE PEOPLE IN THE 14TH AMENDMENT, AND SINCE BY CONGRESS, ARE EXEMPT FROM *ROOKER-FELDMAN* IN ACCORD WITH *EXXON MOBIL v SAUDI BASIC IND. CORP.*

In the recent unanimous decision in *Exxon Mobil* this Court held that Congress has authority to make exceptions to *Rooker-Feldman*, if it decides to.

> "Congress, if so minded, may explicity empower district courts to oversee certain state-court judgments and has done so, most notably, in authorizing federal habeas review of state prisoners' petitions. 28 U.S.C. 2254(a)."
> (See *Exxon*, fn 8.)

Petitioner believes that the civil rights acts - 42 USC 1983, etc. - authorized by the 14th Amendment sec 5 are long existing exceptions to *Rooker-Feldman*, equal to that of habeas corpus, but in a civil context.

Petitioner would like this issue to be decided now, since he is elderly, 84, and his good name and reputation are at issue. Petitioner does not have many years left to clear his name and reputation of the black spots wrongly and maliciously placed upon him by Respondent in the form of permanent injunctions against filing lawsuits in state courts. Furthermore, he has little faith that the 6th Circuit will reach a just decision on the merits, which he has a right to expect, should the case be remanded. In addition, Petitioner has little money to pursue additional appeals. (See Pet. Affidavit at p 29). [3]

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[3] "Some litigants have long purses. Many, however, can hardly afford one lawsuit, let alone two. Shuttling the parties between state and federal tribunals is a sure way of defeating the ends of justice." Justice Douglas quoting his

Secondly, *10 years ago* the 6th Circuit invoked *Rooker-Feldman* to bar Petitioner an appeal by right decision on the merits in a distinct previous 42 USC 1983, etc., civil rights suit against Respondent Mulder. Then, as now, Respondent was not even a party to the state suit. (See Respondent's Appendix, p 34-36.) Respondent was, as in the related state case here, only an attorney in the state case.

Third, the 6th Cir and lower courts have dismissed many civil rights cases based on *Rooker-Feldman*, most are unpublished. Some where the poor plaintiffs could not afford the money and time to appeal, especially not all the way to this Court, in contrast to the *Exxons*, and *Saudi's* of this world. (For example *Wabeke v Mulder*, 95-2099, at Respondent's Appendix p 34-36) Every year many 1,000's of civil rights cases are filed. It will be necessary that all of them file appeals, if they can afford it, to decide at the courts of appeals whether the civil rights actions are exceptions to *Rooker-Feldman* under *Exxon*. How many will not be able to afford it and lose a valid case? Then there will be more appeals to this court, which many will not be able to afford. See fn 3.

Fourth, 28 USC 1343 clearly grants the federal district court broad jurisdiction to hear civil rights complaints. It makes no distinction as to whether the civil rights violation occurred within a state case or outside of a state case, whether by a state judge, state lawyer, state clerk or other state employee. Petitioner claims the jurisdiction of 28 USC 1343, and hereby moves to amend his pleadings to so include it. 28 USC 1653.

Fifth, at least one court of appeals has stated "applying" *Rooker-Feldman* "has proven to be both *complex and difficult*." (emphasis added) *Silverman v Silverman*, 338 F.3d 886, 893 (2003). That is another reason to review and reverse.

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dissent in *Clay v Sun Ins.* 363 US 207, 228 (1960) in *England v Louisiana St. Brd Med. Exam.*, 375 US 411, 425 (1964). The same applies to appeals.

Lastly, there has to be some way that state judicially imposed injunctions may be challenged in federal court when the Constitution via the First Amendment clearly protects the right. Petitioner believes it is under the civil rights laws.

CONCLUSION

For these reasons Petitioner requests that the petition for writ of certiorari be granted and a decision be made on the merits.

Respectfully submitted,

_____

Paul E. Wabeke

April 15, 2005

CERTIFICATION OF PETITIONER

Petitioner states and affirms that this motion for rehearing complies with the intent of Rule 44(2) and is presented in good faith and not presented for purposes of delay.

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Paul E. Wabeke

April 15, 2005